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May 26, 1961
Opinion No. 61-39

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: J. W. Kelly, State Treasurer

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Should 25 per cent of the tax collected under A.R.S. §42-1341, as amended, be paid from all taxes collected after July 1, 1961, or should the 25 per cent be paid from all taxes which become due after July 1, 1961?

CONCLUSION: See body of opinion.

At the regular general election held November 8, 1960, the qualified electors of the State of Arizona approved the initiative petition amending Section 42-1341 of the Arizona Revised Statutes relating to your above question to read as follows:

"42-1341. Special privilege tax account; license fee and privilege tax administration fund; appropriation to welfare department and municipalities; permitting the taking of a special census to be used as the basis for apportionment.

A. The commission shall each day remit all revenues collected under this article to the state treasurer, through the state auditor, and the state treasurer shall credit the payments to a fund designated as a special privilege tax account.

B. For the purpose of enforcing the provisions of this article, there is appropriated to the commission from taxes collected under this article four per cent of the taxes collected each month which shall be credited by the state treasurer to the license fee and privilege tax administration fund. The fund shall be disbursed only in the manner and in amounts as provided by the legislature in the general appropriation bill, and any amount remaining unexpended in the special fund at the end of the fiscal year shall revert to the general fund.

C. There is appropriated to the state board of social security and welfare from the taxes collected under this article fifteen per cent of the taxes collected each month to be used for the purposes set forth in chapter 1 of title 46.

D. The state treasurer shall pay twenty-five (25) per cent of the tax collected under this article to the various

municipalities of the state to be used by the municipalities for any municipal purpose and to be distributed in proportion to their population as shown by the last federal decennial census. Any municipality during the fifth year following the decennial census, may cause to be taken by the United States Census Bureau a special census of the population within the municipal limits. The result of such special census may be certified by the state tax commission. Commencing on July 1, in the sixth year following the last federal decennial census, such special census shall be used as the basis of apportionment of the taxes collected under this article in determining the amount payable to such municipality until the next federal decennial census.

Section 2. Effective date. The provisions of this initiative measure shall become effective on July 1, 1961."

The effective date of an initiative and referendum measure is set forth in our Constitution, Article 4, Part 1, Section 1, Subsection 5, which reads as follows:

"(5) Effective date of initiative and referendum measures

Any measure or amendment to the Constitution proposed under the Initiative, and any measure to which the Referendum is applied, shall be referred to a vote of the qualified electors, and shall become law when approved by a majority of the votes cast thereon and upon proclamation of the Governor, and not otherwise."

It is to be noted that in reference to this particular initiative the Governor of the State proclaimed the initiative as the law of this State on the 9th day of December, 1960, and under the above constitutional section the said initiative became the law as of that date. A.R.S. Section 44-1341, Subsection 2, concerns the effective date and reads as follows:

"Section 2. Effective Date. The provisions of this initiative measure shall become effective on July 1, 1961."

Since the above initiative became law on the 9th day of December, 1960, and the Act itself provides an effective date of July 1, 1961, this is a mandate to the State Treasurer to pay 25 per cent of the tax collected under this Article to the various

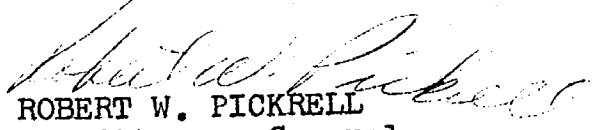
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municipalities of the State from the effective date of July 1, 1961, irrespective of the date the taxes were due but only as to when collected, as set forth in A.R.S. §42-1341, Subsection D.

It is our conclusion, therefore, that the State Treasurer shall pay 25 per cent of all taxes collected to the various municipalities from July 1, 1961, irrespective of the dates that the taxes actually became due.

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